In the Supreme Court of the Hawaiian Islands.

JUNE TERM, 1893.

KAWAI K. GEORGE vs. HANAKAHLANI HOLT.

EJECTMENT.

MOTION TO RESTRICT ORDER OF NEW TRIAL.

BEFORE JUDD, C. J., BICKERTON AND FREAR, JJ.

An opinion was filed by this Court ordering a new trial. Plaintiff's counsel moved the Court to restrict the order for new trial to only one issue, and also claimed that a remittitur or remanding order was necessary before the case could go on the calendar.

Held, that the Court had power to restrict the new trial to certain issues, but the exercise of that power depended on the circumstances of the case. That there was no rule or statute which required a remittitur or remanding order to be made before the case could be placed on the trial calendar.

OPINION OF THE COURT BY BICKERTON, J.

This matter comes here on a motion filed by plaintiff's counsel, which is as follows:

"Plaintiff's motion to restrict order of new trial.

"Whereas their Honors the Justices of the Supreme Court have signed and filed in the clerk's office their opinion to the effect of authorizing a new trial in said cause, sustaining the defendant's exceptions to the refusal of the Circuit Court to grant the same; and whereas no order has been made otherwise than is contained in said opinion; and whereas the said opinion does not refer to the right of the defendant of a re-trial on the question of his claim to said property by way of inheritance:

"Now the plaintiff moves that an order for such re-trial be made restricting the same to a re-trial of the defendant's claim of adverse possession."

There is no question that this Court has power to grant a new trial on certain conditions, and counsel has cited three of our own reported cases in support of this. First is the case of Duncan vs. Wilder Steamship Company. In that case a number of exceptions were taken to the instructions given by the Court. The exceptions as to the defendant's liability were overruled and the verdict was sustained as to that branch of the case; but the exceptions taken to the instruction of the Court as to the measure of damages were sustained, and the Court say: "It seems to us that the verdict should be set aside as to the amount of damages and a new trial allowed to consider and decide the question of the amount of damages." The exceptions in that case were purely questions of law.

Second, the case of Gay vs. Mendonca, 7 Haw. 296. In that case, by the special findings in the verdict it was apparent that the jury had misunderstood the instructions of the Court in respect to the measure of damages, and a new trial was ordered upon the amount of damages only.

Third, the case of Riemschneider vs. Kalaehao, 5 Haw. 550. In that case the Court found that the presiding Judge erred in not instructing the jury as to a certain question of law affecting one item, viz., of notes $245 damages set out in the verdict. The items were one carriage $100, three horses $150, notes $245. The Court found that the Judge properly instructed the jury as to the other items, and say: "We therefore hold that a new trial should be had between the parties unless the plaintiff remits the damages $245 and interest." * * * That is, the Court imposed this condition on the verdict standing.

We are of the opinion that those three cases cannot be considered as being on a par with the case at bar. In this case the matter comes up simply on a motion for a new trial on the ground that the verdict was contrary to law and evidence, and the Court ordered a new trial. The Court does not find that any part of the verdict should be sustained. Who can say upon what issue the jury came to their verdict? The Court does not find that the question of inheritance was settled, but finds that the defense of adverse possession was disregarded by the jury through inadvertence or prejudice. The effect of ordering a new trial was to annul or set aside the verdict and place the case back where it was before a trial was had.

Counsel for plaintiff contends that the opinion of the Justices of this Court is not an order, but only authorizes one being issued by the Clerk; that granting a new trial means that a new trial may be had, or that an order may be taken out authorizing a new trial, and that such an order should in some way be certified to the Court in which the new trial is to be had; that this can only be done by a remittitur or by some remanding order in the nature of a remittitur; that on the filing of the opinion the order should be drafted and submitted, and when settled as to terms, etc., filed, counsel then to take their own course in getting the case on the trial calendar of the Court below. As regards the contention that the opinion of the Justices is not an order, we are of the opinion that it is an order. The Court does not say that there ought to be a new trial. It is a definite and positive order that there shall be a new trial. The language used is: "We consider that this is a case requiring the interference of the Court and therefore sustain the exceptions and order a new trial."

In regard to the remittitur or remanding order, we are of the opinion that the practice contended for by plaintiff's counsel would be good practice under the new Judiciary Act. As now when a new trial is ordered by this Court, the case goes back to the Circuit Court for trial. Before January of this year, when a new trial was ordered it did not go to another Court but simply went on the calendar for the next term of the same Court; but we have no rule of Court or statute requiring a remittitur or remanding order to be issued before the case can be put on the calendar for the next term of the Circuit Court. As a matter of fact this case was placed on the calendar at the last term of the Circuit Court, and is now pending for trial in that Court.

This Court ordered a new trial of this case without any conditions being imposed, and it has been placed in the calendar of the lower Court. This is not a motion for a rehearing on the exceptions.

The motion is denied.

A. S. Hartwell for plaintiff; A. Ross and C. W. Ashford for defendant.

Honolulu, July 13th, 1893.

In the Supreme Court of the Hawaiian Islands.

JUNE TERM, 1893.

JAMES MOSES et al. vs. J. R. ROBERTSON, defendant; Minister of the Interior, garnishee.

ASSUMPSIT.

BEFORE JUDD, C. J., BICKERTON AND FREAR, J.

The Government owed defendant a balance due on a contract to build a bridge. The plaintiffs garnisheed the Minister of the Interior.

Held: That the said balance due the defendant could not be attached and that defendant was not a Government beneficiary within the meaning of Chapter 50 Laws of 1890.

OPINION OF THE COURT BY BICKERTON, J.

The plaintiffs sued the defendant in the District Court of Honolulu for $300.00 due them for work done by them on the Waimea bridge, Oahu, at the request of the defendant, who had a contract to build the same for the Hawaiian Government, alleging that defendant was an employee of the Interior Department of the Hawaiian Government, and that said Government was indebted to defendant for services rendered as such employee, whereupon a garnishee process was served on the Minister of the Interior. After hearing, the District Court gave judgment for the plaintiffs for $225.00 and costs, and also found that defendant was not a Government beneficiary under the Act of 1890, and the garnishee was discharged.

The case now comes here on appeal from said District Court on a point of law, viz., "whether or not the defendant is a Government beneficiary under Chapter 50, Laws of 1890." There is no dispute as to the fact that the defendant had a contract to build the said bridge for the Hawaiian Government, and that there was still money due and owing to him by said Government on said contract. The question is can this money be attached by defendant's creditors under the said Act?

Section 1 reads as follows:

Any officer or employee, or other person in the service of the Hawaiian Government, or in receipt of, or entitled to a salary, stipend, wages, annuity or pension from the said Government, or any department, board or bureau thereof, shall, for the purposes of this Act, and of any proceedings hereunder, be known and described as a Government beneficiary, hereinafter denominated such beneficiary.

Section 2 reads as follows:

The salary, stipend, wages, annuity or pension of such beneficiary may be attached for, and applied in the payment of his debts, in the manner prescribed in this Act.

Section 1 defines who shall be considered a Government beneficiary. It is clear that it only applies to an officer or employee, or one in the service of the Hawaiian Government who is in receipt of or entitled to a *salary, stipend, wages, annuity or pension*. It will be seen by Section 2 that only the money due such persons may be attached and applied to the payment of their debts under the Act. It confines the operation of the Act to the particular class of persons specifically named. It cannot reach beyond; it is limited. The Government cannot be garnisheed except as provided by statute. Wade on Attachment, Sections 346, 418, 454; Wood vs. Elderton, 2d Haw. 80. Question, can contractors be brought within this limit? We are of opinion that they can not. How is it possible to make a balance due on a contract to build a bridge mean a *salary, stipend, wages, annuity or pension?*

"Salary" and "wages" are synonymous. Both mean a sum of money periodically paid for services rendered.

"Pension. A periodical allowance of money granted by a government for services rendered, in particular to a soldier or sailor in connection with a war or with military operation." See Anderson's Dictionary of Law.

"Annuity. A periodical payment of money, amounting to a fixed sum in each year. Stipend. To pay by settled stipend or wages; put upon or provided with a stipend." See The Century Dictionary.

We are therefore of the opinion that the ruling of the lower Court was correct and must be sustained.

The appeal is dismissed.

A. Ross for plaintiffs; Attorney-General W. O. Smith and J. A. Magoon for defendant and garnishee.

Honolulu, July 13th, 1893.

In the Supreme Court of the Hawaiian Islands.

JUNE TERM, 1893.

PROVISIONAL GOVERNMENT OF THE HAWAIIAN ISLANDS vs. AH UN.

BEFORE JUDD, C. J., BICKERTON AND FREAR, J J.

There is no appeal to the Supreme Court from a decision of a District Magistrate denying a motion to discharge the defendant charged with an offense within the summary jurisdiction of the Court, —no final judgment having been rendered.

OPINION OF THE COURT BY JUDD, C.J.

The defendant in this case was charged in the District Court of Honolulu with the offense of conducting a lottery, which is within the summary jurisdiction of that Court. He pleaded not guilty, and then moved to be discharged on the ground that the law under which he was charged was not in force when the act was alleged to have been committed. The Magistrate denied the motion, and without further proceedings the defendant appealed to this Court. The matter was submitted to us on briefs. The Attorney-General contends that as no final judgment was rendered by the Magistrate, an appeal does not lie to this Court on the points of law raised. We believe this contention is right. We cannot find any authority in our statutes or in reason for allowing appeals from interlocutory or provisional rulings of a District Court. It would be intolerable to allow such a procedure. For then a party in any case, civil or criminal, could take an appeal on one ruling upon the first plea which might be made, and the case would be tied up till it could be heard by the Supreme Court. If the judgment of the Supreme Court should be adverse to the appellant the case would go back to the District Court where decisions upon further pleas or motions or objections to the introduction of evidence might be made the subject of further appeals to be heard seriatim by the Supreme Court and thus the case vibrate back and forth between the Courts and the proceedings be interminable.

"An appeal only lies from a final judgment or some decree affecting substantial rights and equivalent thereto." 1 Am. & Eng. Encycl. of Law, p. 617 and cases cited. "An appeal like a writ of error is generally confined to a final judgment. It cannot be taken, unless expressly authorized by statute, from a judgment merely interlocutory or provisional." Hillard New Trials, p. 568 and cases cited. It has been the unquestioned practice for years not to allow appeals of the character of the one now before us and we prefer to adhere to it.

We therefore dismiss the appeal and send the case back to the District Court for further proceedings.

Attorney-General W. O. Smith for the prosecution; A. S. Hartwell for defendant.

Honolulu, July 17th, 1893.

In the Supreme Court of the Hawaiian Islands.

JUNE TERM, 1893.

THE PROVISIONAL GOVERNMENT OF THE HAWAIIAN ISLANDS vs. WALTER G. SMITH.

BEFORE JUDD, C. J., BICKERTON AND FREAR, JJ.

There is no appeal to the Supreme Court from a decision of a District Magistrate upon a demurrer to a charge against a defendant in his examination for an offense cognizable before a jury.

OPINION OF THE COURT BY JUDD, C.J.

The defendant was charged with libel in the District Court of Honolulu. He filed a demurrer to the charge which, after argument, was overruled by the Magistrate. He did not plead, nor was there any evidence taken, nor did the Magistrate either commit him for trial or discharge him. But an appeal was immediately taken to the Supreme Court from the ruling of the Magistrate against the demurrer. When the matter came up before us, attention of counsel was called by the Court to the novelty of the proceeding, but as the counsel for the prosecution made no objection to the procedure, stating, however, that he was not thereby to be considered as approving of the course taken, the Court heard argument on the merits of the demurrer.

We think now that it was irregular, and since it might be considered a precedent, we wish now to prevent the initiation of a practice that will lead to great embarrassment.

The proceeding in district courts where a party is charged with an offense cognizable before a jury is not strictly a "trial." It is a preliminary examination, somewhat analogous to the proceedings of a grand jury in other jurisdictions. The defendant is not required to plead to the charge, though he often does so. He is not put on his defense, and he may waive the examination altogether, or he may proceed with his defense. All that the statute requires is that the Magistrate shall "consider whether there is probable cause to believe that a jury would, upon the evidence adduced, convict the accused of the offense of which he is charged" * * * and he must either release the prisoner or commit him for trial at the Circuit Court. There are but these two alternatives, and, in their very nature, there is no appeal from either decision. Every legal objection available to the defendant can be presented in the District Court, and, if the result of the proceedings should be a commitment, they are again available to the defendant in the court where his trial is to take place.

We do not find that the present statute concerning appeals (Section 68, Chapter LVII. of the Act to Reorganize the Judiciary) has enlarged the right of appeal. Formerly, by Section 1006 of the Civil Code, a party deeming himself aggrieved by the "decision" of a district magistrate could appeal. Now the statute above cited allows appeals from "all decisions." But neither of these statutes allows appeals from interlocutory or provisional orders, rulings or decisions of a district magistrate.

We therefore decline to assume jurisdiction over this appeal, and dismiss the same and send the case back to the District Court of Honolulu for further proceedings.

F. M. Hatch for prosecution; A. S. Hartwell for defendant.

Honolulu, July 17, 1893.

THE CRACK OF DOOM.

Petition to Throw Samuel Parker Into Bankruptcy.

The Unsecured Creditors Take a Hand In the Deal.

Late on the afternoon of the 18th instant Lawyer Magoon filed the petition of Hopp & Co. praying that Samuel Parker be adjudged a bankrupt. The amount due Hopp & Co. is something over $600, but while this petition was at the instance of that firm it is understood to represent thousands of dollars of other unsecured claims.

Hope has been expressed by some of Mr. Parker's friends that a settlement could be reached before return day, eight days hence, but this seems highly improbable to those who know the history of the Parker estate.

The step had been made necessary by reason of the executions already taken out on Mr. Parker's property at the suit of Mr. Wilhelm, Lewers & Cooke, and Mr. E. C. Rowe, aggregating $2190.63, to satisfy which a large part of all the property of Parker has been levied upon, and is advertised for sale on the 26th instant, subject to certain circumstances.

Unless the present bankruptcy proceedings were taken now, all the property would have been sold to satisfy the above named persons and firms, to the exclusion of all other unsecured creditors. The present action for bankruptcy proceedings was not prompted by any ill will, but with a view of obtaining payment of the debts of the numerous unsecured creditors, and with the expectation that the estate will realize more than enough to pay all the creditors, so that a balance can be given Mr. Parker or the trustees.

THE COMING RACES.

W. H. Cornwell Will Enter Four of His Horses.

Mr. W. H. Cornwell will enter four of his horses for the races to take place on September 2nd. The animals will be brought down from Maui at an early date so they will be in good trim when the racing day arrives.

It is expected that Mr. Horner of Lahaina will enter three horses and several other horsemen will make entries for the occasion. The idea to hold the races in the afternoon meets with general approval as people need not leave town until after lunch.